K Ramalingam a/l Krishnamoorthy & Ors v Subramaniam a/l Sathasivam & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCVC-70–02 OF 2016
YEOH WEE SIAM J
25 JULY 2016

Civil Procedure — Striking out — Writ and statement of claim — Whether plaintiffs lacked locus standi to file and maintain action — Whether plaintiffs' claim failed to disclose reasonable cause of action and was scandalous, frivolous and vexatious and abuse of process of court — Whether action obviously unsustainable and deserved to be struck out

The plaintiffs, who claimed to be members of the Malaysian Indian Congress ('MIC') at the material time, sought in the instant action to set aside the decisions of the High Court in two judicial review applications ('JR 37' and 'JR 39') on the ground they had discovered fresh evidence, not available to the High Court when it dismissed JR 37 and JR 39, of alleged fraudulent and corrupt practices between the defendants and the Registrar of Societies ('ROS') which were designed to nullify the MIC's 2013 elections and have the party hold fresh elections. JR 37 and JR 39 had sought to set aside various directives given by ROS to the MIC. The defendants filed separate instant applications to strike out the plaintiffs' writ and statement of claim under O 18 r 19 of the Rules of Court 2012. Primarily, the defendants contended that the plaintiffs had no locus standi to maintain the action because at the time the suit was filed, the plaintiffs had ceased to be members of the MIC. The defendants relied upon articles 15.6 and 91 of the MIC's Constitution, under which any member who resorted to court proceedings without first seeking recourse with the party's central working committee ('the CWC') automatically ceased to be a member, and also articles 12.2 and 12.2(a), under which membership ceased upon failure to pay annual subscription to the party. The plaintiffs said they were members of the MIC when the alleged wrongdoings took place and the reason some of them refused to continue paying subscriptions was because they did not recognise the 2013 elections and the office-bearers thereby elected. The plaintiffs contended that even if they had no locus standi, they were still entitled to the declaratory reliefs sought.

Held, allowing the striking-out applications:

(1) On the ground of locus standi alone, due to the plaintiffs not being members of the MIC any more, their suit ought to be struck out without the court having to hear the case on its merits. The plaintiffs were simply

'busybodies' with no rights whatsoever, and therefore had abused the judicial process. Members of a registered society, including the plaintiffs, were bound by its rules. By their own volition and acts, either by not paying the subscription or by resorting to court proceedings without first referring the matter to the central working committee ('CWC'), the plaintiffs had decided not to continue their membership with the MIC. Pursuant to articles 91 and 15.6 of the MIC's Constitution, the first plaintiff ceased to be a party member when he resorted to court proceedings for the matter in JR 37 without first referring his complaint to the CWC. By virtue of the same articles, the fifth and sixth plaintiffs ceased to be members the moment they filed this suit without first referring the matter to the CWC. The remaining plaintiffs were not members of the MIC when they brought this suit as their membership had expired pursuant to articles 12.2 and 12.2(a) when they refused to pay their subscriptions. For a long period after the plaintiffs had ceased to be members, they did nothing about restoring their membership in the MIC (see paras 28–29 & 33–34).

(2) As the plaintiffs were no longer members of the MIC, it followed that they no longer had any say in MIC's matters. The reliefs they sought showed that even if the court were to grant them, the plaintiffs would not be in a position to enjoy the fruits of their litigation. The reliefs, if granted, could not retrospectively confer membership in the MIC on the plaintiffs. This was a fresh action to set aside the decisions in JR 37 and JR 39 and to initiate any fresh action the plaintiffs first of all had to be members of the MIC to clothe them with the necessary locus standi. It was necessary for the plaintiffs to have continued to be members of the MIC from the time of the alleged conspiracy and wrongdoings until the current date to enable them to have maintained this suit (see para 30).

(3) The plaintiffs' statement of claim did not disclose any reasonable cause of action. The elements of the alleged conspiracy were not sufficiently particularised nor was it shown how the plaintiffs were injured thereby. The MIC and all other persons interested in or who would have been affected by the outcome of the suit were not made parties to the action. Without the joinder of those persons, the declaratory reliefs sought by the plaintiffs breached the rules of natural justice. The first to the sixth defendants were all sued in their personal capacities and not as office-bearers or representatives of the MIC (see paras 40, 63, 66 & 73)

(4) Upon a thorough scrutiny of the plaintiffs' alleged fresh evidence and after studying the grounds of judgment in JR 37 and JR 39, this court was satisfied that the alleged fraud and new evidence would not have had any impact whatsoever on the decision of the High Court to dismiss JR 37 and JR 39. The decision to hold the re-elections was made by the MIC itself. The plaintiffs were challenging that decision and it ought to fail by

reason of s 18C of the Societies Act 1966 which provided that such party decisions and proceedings were non-justiciable and outside the jurisdiction of the court (see paras 54, 57 & 61).

(5) The plaintiffs' case was scandalous, frivolous and vexatious and an abuse of process of the court. The claim was obviously unsustainable and it was a plain and obvious case for striking out of the writ and statement of claim (see para 95).

[Bahasa Malaysia summary

Plaintif yang mendakwa adalah ahli kepada Kongres India Malaysia ('MIC') pada waktu material, memohon tindakan ini untuk mengetepikan keputusan Mahkamah Tinggi dalam dua permohonan semakan kehakiman ('JR 37' dan 'JR 39') atas alasan mereka telah mendapati keterangan baru, tidak terdapat di Mahkamah Tinggi apabila ia menolak JR 37 dan JR 39, mengenai fraud yang dikatakan dan perbuatan rasuah antara defendan dan Pendaftar Persatuan ('PP') yang mana dirancang untuk membatalkan pilihanraya MIC tahun 2013 dan menyebabkan parti untuk mengadakan semula pilihan raya. JR 37 dan JR 39 dipohon untuk mengetepikan pelbagai arahan diberikan oleh PP kepada MIC. Defendan memfailkan permohonan berasingan untuk membatalkan writ dan penyata tuntutan plaintif di bawah A 18 k 19 Kaedah Mahkamah 2012 ('KKM'). Secara khusus, defendan menegaskan bahawa plaintif tidak mempunyai locus standi untuk mengekalkan tindakan kerana pada waktu guaman difailkan, plaintif telah berhenti menjadi ahli MIC. Defendan bergantung kepada artikel 15.6 dan 91 Perlembagaan MIC, di mana mana-mana ahli yang memilih untuk prosiding mahkamah tanpa mendapatkan bantuan dengan jawatankuasa pusat parti ('CWC') secara automatik tidak lagi menjadi ahli, dan juga artikel 12.2 dan 12.2(a), di mana keahlian terhenti apabila kegagalan untuk membayar yuran tahunan kepada parti. Plaintif mengatakan mereka adalah ahli MIC apabila salah laku yang dikatakan terjadi dan sebab beberapa daripada mereka enggan untuk membayar yuran tahunan adalah mereka tidak mengiktiraf pilihanraya 2013 dan pemegang jawatan yang dipilih. Plaintif menegaskan bahawa jika pun mereka tidak mempunyai locus standi, mereka masih berhak kepada relif deklarasi yang dipohon.

Diputuskan, membenarkan pembatalan permohonan:

(1) Atas alasan locus standi sahaja, disebabkan oleh plaintif bukanlah lagi ahli MIC, guaman mereka sepatutnya dibatalkan tanpa mahkamah perlu untuk mendengar kes pada meritnya. Plaintif hanyalah semata-mata 'busybodies' tanpa apa hak sekalipun, dan oleh itu telah menyalahguna proses kehakiman. Ahli kepada persatuan berdaftar, termasuk plaintif, adalah terikat dengan peraturannya. Dengan kerelaan dan tindakan mereka, sama ada dengan tidak membayar yuran atau dengan memilih prosiding mahkamah tanpa merujuk perkara tersebut ke CWC, plaintif

telah memutuskan untuk tidak meneruskan keahlian mereka dengan MIC. Menurut artikel 91 dan 15.6 perlembagaan MIC, plaintif pertama berhenti untuk menjadi ahli parti apabila dia memilih prosiding mahkamah untuk perkara dalam JR 37 tanpa membawa aduannya kepada CWC. Menurut kuasa artikel yang sama, plaintif kelima dan keenam berhenti menjadi ahli sebaik sahaja mereka memfailkan guaman ini tanpa membawa perkara ini kepada CWC. Plaintif yang lain bukanlah ahli MIC apabila mereka membawa guaman ini kerana keahlian mereka telah tamat tempoh menurut artikel 12.2 dan 12.2(a) apabila mereka enggan untuk membayar yuran. Selepas tempoh waktu yang lama setelah plaintif berhenti menjadi ahli, mereka tidak melakukan apa-apa untuk memperbaharui keahlian mereka dalam MIC (lihat perenggan 28–29 & 33–34).

(2) Memandangkan plaintif bukanlah lagi ahli MIC, itu disusuli yang mereka tidak lagi mempunyai apa-apa kata dalam perkara MIC. Relif yang mereka pohon menunjukkan bahawa jika pun mahkamah akan membenarkan mereka, plaintif tidak berada dalam kedudukan untuk menikmati hasil daripada tindakan undang-undang mereka. Relif itu, jika diberikan, tidak boleh secara restrospektif memberi keahlian dalam MIC kepada plaintif. Ini adalah tindakan baru untuk mengetepikan keputusan dalam JR 37 dan JR 39 dan untuk memulakan apa-apa tindakan baru plaintif pertama sekali hendaklah merupakan ahli MIC untuk memberikan mereka locus standi yang diperlukan. Ia adalah perlu untuk plaintif untuk terus menjadi ahli MIC daripada masa konspirasi dan salah laku yang dikatakan sehingga tarikh terkini untuk membolehkan mereka untuk mengekalkan guaman ini (lihat perenggan 30).

(3) Penyata tuntutan plaintif tidak mendedahkan apa-apa kausa tindakan munasabah. Elemen konspirasi yang dikatakan tidak cukup dibutirkan dan tidak juga ia menunjukkan bagaimana plaintif mengalami kerugian dengan demikian. MIC dan lain-lain orang yang berkepentingan atau sesiapa yang boleh terjejas dengan keputusan guaman tidak dijadikan pihak dalam tindakan. Tanpa percantuman orang-orang itu, relif deklarasi yang dipohon oleh plaintif melanggar peraturan keadilan asasi. Defendan pertama dan keenam kesemuanya disaman dalam kapasiti peribadi dan bukan sebagai pemegang jawatan atau wakil MIC (lihat perenggan 40, 63, 66 & 73).

(4) Setelah penelitian menyeluruh keterangan baru yang dikatakan dan selepas mengkaji alasan penghakiman di JR 37 dan JR 39, mahkamah berpuas hati bahawa fraud yang dikatakan itu dan keterangan baru tidak akan mempunyai apa-apa kesan ke atas apa jua keputusan Mahkamah Tinggi untuk menolak JR 37 dan JR 39. Keputusan untuk mengadakan semula pilihan raya dibuat oleh MIC sendiri. Plaintif mencabar

keputusan itu dan sepatutnya gagal atas sebab s 18 Akta Persatuan 1966 yang mana memperuntukkan bahawa keputusan parti dan prosiding itu adalah tidak boleh diadili dan di luar bidang kuasa mahkamah (lihat perenggan 54, 57 & 61).

(5) Kes plaintif adalah bersifat skandal, remeh serta menyusahkan dan penyalahgunaan proses mahkamah. Tuntutan itu jelas tidak mapan dan ia adalah kes biasa dan jelas untuk membatalkan writ dan pernyataan tuntutan (lihat perenggan 95).]

Notes

For cases on writ and statement of claim, see 2(5) *Mallal's Digest* (5th Ed, 2015) paras 9046–9062.

Cases referred to

Anina Saadudia v Datuk Seri Tengku Adnan Tengku Mansor & Anor [2016] 1 MLRH 647, HC (refd)

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36, SC (folld)

Crofter Hand Woven Harris Tweed Co Ltd and Others v Veitch and Another [1942] 1 All ER 142; [1942] AC 435 (refd)

Datuk Pasamanickam & Anor v Agnes Joseph R Narayanan Samy v Agnes Joseph [1980] 2 MLJ 92, FC (folld)

Gasing Heights Sdn Bhd v Aloyah bte Abd Rahman & Ors [1996] 3 MLJ 259, HC (refd)

Goh Hock Hai v Eon Bank Bhd [2012] 9 MLJ 656, HC (refd)

Government of Malaysia v Lim Kit Siang [1988] 2 MLJ 12, SC (refd)

Lonrho plc and others v Fayed and others (No 5) [1994] 1 All ER 188, CA (refd)

Meek v Fleming [1961] 3 All ER 148, CA (consd)

Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor [1996] 1 MLJ 113, FC (distd)

Ranjeet Singh Sidhu v Zavarco Plc [2015] MLJU 638; [2016] 2 CLJ 975, HC (distd)

Rediffusion (Hong Kong) Ltd v A-G of Hong Kong [1970] AC 1136, PC (refd)

Rosli bin Dahlan v Tan Sri Abdul Gani bin Patail & Ors [2014] 11 MLJ 481; [2014] 9 CLJ 225, HC (refd)

Seruan Gemilang Makmur Sdn Bhd v Kerajaan Negeri Pahang Darul Makmur & Anor [2016] 3 MLJ 1; [2016] 2 MLRA 263, FC (folld)

Tuan Haji Ishak bin Ismail & Ors v Leong Hup Holdings Bhd and others appeals [1996] 1 MLJ 661, CA (refd)

Yeng Hing Enterprise Sdn Bhd v Liow Su Fah [1979] 2 MLJ 240, FC (refd)

Legislation referred to

Evidence Act 1950 s 44

Rules of Court 2012 O 18 r 19(1)(a), (1)(b), (1)(d)

A Societies Act 1966 ss 16(1), 18C
Specific Relief Act 1950 ss 16(1), 41, 42

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B *CK Lim (Balbir Singh, David Yii and Daniel Ong with him) (Najiana Wan Balbir) for the first defendant.*
Ho Hon Keong (Ho & Ho) for the third, fourth and fifth defendants.
Kamarul Hisham (Vasanthi Arumugam, Elina Natasha and T Raja with him) (Vas & Co) for the second and sixth defendants.
C *Amarjeet Singh (Suzana bt Atan with him) (Senior Federal Counsel, Attorney General's Chambers) for the seventh and eighth defendants.*

Yeoh Wee Siam J:

D BACKGROUND OF THE CASE

[1] The facts giving rise to the plaintiffs' claim have been set out in Appendix A attached to the plaintiffs' written submissions. For ease of reference and for a clear understanding of the history and background to this case, I have
E enclosed the 'background' and other particulars as set out by learned counsel for the plaintiffs in Appendix A. Appendix A is to be used only for the purpose of providing the background information. I caution here that at this juncture the court has yet to evaluate the facts set out therein.

F THE PLAINTIFFS' CLAIM

[2] The plaintiffs claim is grounded on allegations of fraudulent and corrupt practices by the defendants in pursuance of an unlawful scheme which was designed to secure the nullification of the MIC's 2013 elections and to have
G re-elections, which were to be engineered and stage-managed in such a manner as to secure the primary objective of deposing one Dato' Seri G Palanivel a/l K Govindasamy ('Palanivel' or 'Palani'), who was elected as the President of the Malaysian Indian Congress ('MIC') in the 2013 elections ('objective' or 'objectives') (paras 27, 31–32 and 56–57 of the SOC).

H

[3] The plaintiffs allege that by reason of the defendants' involvement in the scheme and aiding the principals in achieving the objectives, the seventh and eighth defendants are guilty of misfeasance in public office which is a recognised actionable tort in itself (see *Rosli bin Dahlan v Tan Sri Abdul Gani*
I *bin Patail & Ors* [2014] 11 MLJ 481; [2014] 9 CLJ 225).

[4] The fraudulent and corrupt practices resulted in the issuance of four impugned letters from the Registrar of Societies ('ROS') to the MIC which contain various decisions and directions designed to achieve the objectives.

These decisions and directions of the ROS were sought to be impugned through two previous judicial review applications namely, No R2–25–37–02 of 2015 ('JR 37') and No R2–25–39–02 of 2015 ('JR 39') (see grounds of judgment of Asmabi J (as she then was) in exh MR1 of encl 10).

[5] By this action, the plaintiffs seek to set aside the orders of the Kuala Lumpur High Court, special and appellate powers, which dismissed the applications in JR 37 and JR 39 on the ground that the court, at the time of hearing the judicial review applications, was not cognisant of the fraudulent and corrupt practices involving the ROS which led to the four letters being issued, and the court had placed great reliance on the perceived impartiality and independence of the ROS in the due discharge of his duties.

[6] In seeking to impeach the orders of the court in JR 37 and JR 39, the plaintiffs rely on s 44 of the Evidence Act 1950 which provides as follows:

> 44 Fraud or collusion in obtaining judgment or incompetency of court may be proved
>
> Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a court not competent to deliver it or was obtained by fraud or collusion.

ENCLOSURE 11

[7] Enclosure 11 is the notice of application ('the application') of the seventh and eighth defendants to strike out the plaintiffs' writ of summons ('writ') and statement of claim ('the SOC') under O 18 r 19(1)(b) or (d) of the Rules of Court 2012 ('the ROC').

ENCLOSURE 19

[8] Enclosure 19 is the application of the second defendant to strike out the plaintiffs' writ and SOC under O 18 r 19(1)(a) of the ROC.

ENCLOSURE 20

[9] Enclosure 20 is the application of the sixth defendant to strike out the plaintiffs' writ and SOC under O 18 r 19(1)(a) of the ROC.

ENCLOSURE 31

[10] Enclosure 31 is the application of the first defendant to strike out the plaintiffs' writ and SOC under O 18 r 19(1)(a), (b) and (d) of the ROC.

ENCLOSURE 33

[11] Enclosure 33 is the application of the third, fourth and fifth defendants to strike out the plaintiffs' writ and the SOC under O 18 r 19(1)(a), (b) and (d) of the ROC.

THE COURT'S DECISION ON ENCLS 11, 19, 20, 31 AND 33 RESPECTIVELY

[12] On 11 July 2016, after hearing encls 11, 19, 20, 31 and 33 respectively, I allowed each application and ordered the plaintiffs to pay each applicant/defendant, or each set of applicants/defendants, as the case may be, costs of RM3,000 for each application, subject to payment of the allocatur fee of 4% of the costs.

GROUNDS FOR THE COURT'S DECISION

The law

[13] It is trite law that the court would allow the summary process of striking out a claim in a plain and obvious case where there are no serious issues to be tried and the claim is obviously unsustainable (see *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36).

[14] The test for striking out in *Bandar Builder* was upheld and further applied by the Federal Court in the recent case of *Seruan Gemilang Makmur Sdn Bhd v Kerajaan Negeri Pahang Darul Makmur & Anor* [2016] 3 MLJ 1 at pp 16–17; [2016] 2 MLRA 263 at pp 273–274:

> [28] The basic test for striking out as laid down by the Supreme Court in *Bandar Builder* is that the claim on the face of it must be 'obviously unsustainable'. *The stress is not only on the word 'unsustainable' but also on the word 'obviously', ie the degree of unsustainability must appear on the face of the claim without having to go into lengthy and mature consideration in detail. If one has to go into lengthy and mature consideration in detail of the issues of law and/or fact, then the matter is not appropriate to be struck out summarily. It must be determined at trial.*
>
> [29] The established rule on this point is that the court should not examine the evidence in this summary proceedings in such a way as to amount to conducting a trial on the conflicting affidavit evidence. As rightly said by Lord Diplock in the House of Lords in *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER 504 at p 509; [1975] AC 396 at p 407:
>
> > ... The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.
> >
> > It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party

may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial ... (Emphasis added.)

The alleged new evidence obtained by the plaintiffs demonstrating fraud

[15] The plaintiffs submit the following new evidence, which they contend demonstrate fraud, to justify impeaching the two orders in JR 37 and JR 38:

The Emails

(i) the email dated 26-9-2014 from the email address 'selvaganesh.sundram@hotmail.com' to Vignes enclosing a memorandum of complaints against Palani. The said email was forwarded by Vignes to Vas and Subra on 30-9-2014 and 13-10-2014 respectively. This shows that there were factions within the MIC and that the Subra Grouping were intent on having Palanivel removed as President of the MIC;

(ii) the email dated 6-12-2014 from Akmal to Vignes enclosing an attachment entitled 'Surat kepada MIC Re-Election.' The said email was forwarded by Vignes to T. Mohan and Jaspal on the same date. In this email, Akmal forwarded a Letter dated 28-11-2014 that is virtually identical to the letter issued by the ROS to MIC on 5-12-2014 which is referred to in the Statement of Claim as the 1st Letter;

(iii) the email from Vas to Jaspal dated 28-12-2014 enclosing draft entitled 'Surat ROS'. The email reads as follows:

Dear Dato,

I am enclosing the working draft of the letter for your comment.

I have kept the letter simple but please feel free to provide your input and factual additions.

(iv) the email dated 29-12-2014 from Vas to Akmal copied to Vignes and Jaspal enclosing an attachment entitled 'Surat ROS'. The email reads as follows:-

Dear Tuan,

Enclosed please find a copy of the draft reply to MIC which has simplified the issues discussed at our meetings on 24-12-2014 and 26-12-2014. The letter has incorporated both Datuk Vigneswaran's and Dato Jaspal's views and comments. We hope the said draft can be of assistance to Tuan in drafting Tuan's reply to MIC. Kindly do not hesitate to contact us for further clarification (if any) or information.

(v) The attachment is virtually identical to the letter dated 31-12-2014 issued by the ROS to the MIC and has been referred to in the Statement of Claim as the 2nd Letter;

(vi) The email dated 5-1-2015 sent by Vas to Vignes (and copied to edmundbalthazar@yahoo.com) and enclosed a draft letter ('the Draft') meant to be a response by the ROS to MIC. The Draft was in fact transcribed onto the ROS's letterhead and sent to MIC as the said letter dated 6-1-2015 and been referred to in the Statement of Claim as the 3rd Letter;

(vii) It was admitted by Vignes and Vas in their respective Defences that Vas prepared the said Draft. However they have given a contrived and implausible explanation regarding the same. It is respectfully submitted that the subsequent emergence of the emails referred to at paragraphs iii and iv above and the text messages between Ramanan and Vignes (see below) prove the said explanation to be a fiction;

(viii) The email dated 19-2-2015 sent by Vignes to Subra forwarding an email originally sent by Vas to Vignes attached to which was a document described as 'Synopsis MIC-JPPM' ('the Synopsis'). The email was forwarded by Vignes to Akmal on 19-2-2015 ('the emails').

[16] The plaintiffs submit that it was admitted by Vignes/the second defendant and Vas/the sixth defendant in their respective defence that the synopsis was prepared by Vas. Vignes and Vas however deny that the synopsis was to assist the ROS to justify its decisions and directions and they instead try to portray the synopsis as being a benign document. Razin/the seventh defendant/the ROS on the other hand claims that he never needed any synopsis. The plaintiffs contend that the synopsis is not a mere chronological account and instead evinces that the ROS was illicitly working hand in glove with Vignes and Vas to assist them in the scheme.

Text Messages

(x) On 9-2-2015, Vignes and Ramanan exchanged several text messages between them as follows:

09/05/2015, 8:59:05 PM: YB Senator Datuk Vigneswaran DCM: I have done something already Machan

09/02/2015, 8:59:16 PM: Ramanan: ... ok

09/02/2015, 9:01:47 PM: YB Senator Datuk Vigneswaran DCM: But can't stop Machan will have to open all channels.

09/02/2015, 9:02:35 PM: Ramanan: Agreed macha just think before we act

09/02/2015, 9:08:46 PM: Ramanan: Mistake is a mistake but we still have a slight upper hand we mustn't lose it

09/02/2015, 9:08:49 PM: Ramanan: True

09/02/2015, 9:09:31 PM: YB Senator Datuk Vigneswaran DCM: Don't worry I am dragging something that will hold Zahid and dg

09/02/2015, 9:12:09 PM: YB Senator Vigneswaran DCM: He can go to court Machan Which I think he should, I have a plan for that as well;

(xi) On 3-6-2015, Akmal and Ramanan exchanged several text messages between them as follows:

30/06/2015, 10:59:46 AM: Tuan Asp Akmal: Tindakan Palanivel semakin tidak masuk akal – Ramanan

30/06/2015, 11:02:14 AM: Ramanan: semua okay dengan Abang?

30/06/2015, 11:17:34 AM: Tuan Asp Akmal: saya inilah Datuk, orang terbuang. Walaupun begini, tetapi saya masih lagi mengikuti rapat dengan kes MIC ini sb ini baby saya. Saya bersyukur akhirnya keputusan Mahkamah memihak kpd kita. Syabas dan tahniah Datuk.

30/06/2015, 11:17:34 AM: Ramanan: Bang masih di dalam hati kita. Kerja Bang yang menyebabkan kemenangan kami di Mahkamah. Pertolongan abang kita tidak Akan lupakan. (pp 3–6 of the plaintiffs' reply submissions).

The plaintiffs are now not members of the MIC and therefore have no locus standi to maintain this suit

[17] The plaintiffs' case is founded on the allegation that they are members of the MIC and they have been aggrieved by the purported conspiracy, fraud, collusion and other wrongdoings of the defendants (paras 10 and 21–22 of their SOC). However, the defendants respectively have shown that the plaintiffs are now no longer members of the MIC.

[18] Articles 15.6 and 91 of the MIC Constitution provide that:

15.6 Any member who resorts to Court proceedings in breach of Article 91 shall cease to be a member.

...

91. Every member shall be bound by the decision of the Central Working Committee in matters relating to his rights, obligations, duties and privileges as a member of the Congress. If he resorts to court proceedings in respect of his rights, obligations, duties and privileges or on behalf of any other member or in respect of the rendering or meaning of the provisions of this Constitution without first referring to the Central Working Committee or in violation of any decision or directive of the Central Working Committee shall ipso facto cease to be a member of the Congress and shall not be entitled to exercise any of the rights of a member.

[19] Pursuant to articles 91 and 15.6 of the MIC Constitution, the first plaintiff ceased to be a member of the MIC when he resorted to court proceedings for the matter in JR 37, without first referring his complaint to the central working committee ('the CWC'). In fact, Asmabi J in JR 37 made the following finding:

Ground 9 : No authority to commence these proceedings

...

93. The Court noted that the proceedings were commenced without any mandate of the 2013 CWC or the 2009 interim CWC or any resolution from the MIC. ...

...

95. It would appear that JR 37 and JR 39 were instituted by certain personalities who were controlling the MIC and not by the proper resolution and/or mandate from the MIC.

[20] It is noted that the first, second, third, fourth, seventh and eighth plaintiffs did not pay their annual subscription to MIC (para 81 (vi) of encl 44). Articles 12.2 and 12.2(a) of the MIC Constitution provide that:

> 12.2 A member shall renew his membership annually by paying his subscription in advance for the forthcoming year on or before 30th of November each year;
>
> 12.2(a) Notwithstanding anything to the contrary stated herein before, the current membership of a member shall cease on 31st December.

[21] By virtue of articles 12.2 and 12.2(a) of the MIC Constitution, the first, second, third, fourth, seventh and eighth plaintiffs were not members of the MIC when they brought this suit.

[22] As for the fifth and sixth plaintiffs, pursuant to articles 15.6 and 91 of the MIC Constitution, they ceased to be members the moment they filed this suit in respect of the affairs of the MIC without first referring the matter to the CWC.

[23] Exhibit S2 of encl 33 is a letter dated 29 February 2016 from the fifth defendant, in his capacity as the Secretary General of the MIC, to M/s Najiana Wan Balbir, the solicitors for the first defendant, confirming that each of the eight plaintiffs is no longer a member of the MIC.

[24] The eight plaintiffs do not dispute that they are now not members of the MIC. However, they contend that they were all members of the MIC at the material time when the corrupt and fraudulent acts and dishonest assistance, as pleaded in paras 58–75 of the SOC, took place and are aggrieved by them (paras 81(i) and 93 of the affidavit Prabu1).

[25] The plaintiffs relied on the Federal Court case of *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor* [1996] 1 MLJ 113 where at pp 133–135 it is stated:

> Take, for instance, the case of a person who has agreed to become a member, but whose name has been omitted from the register of members. If it transpires that prior to the dispute leading to the presentation of the petition, a company or its board had always treated the complainant as a member, it would not be open to them to assert that the petitioner lacked locus standi. Examples may be multiplied without any principle emerging from them. Take the facts of this very case. Here, we have a fact pattern where the appellant's membership of the company had been terminated in circumstances which are being challenged by him on substantial grounds. The substantial ground he complains of is the deprivation of his

membership in the company. He says that the circumstances attending this deprivation of membership falls within the framework of s 181(1)(a) and (b). It is the company, acting through its board, that had deprived the appellant of the status of a member. *Can the company be now heard to say that the appellant is no longer a member and is therefore disentitled from moving the court under s 181 of the Act and from questioning that very deprivation in proceedings brought under the section? We think not. For it does not lie in the mouth of the alleged wrongdoers to say that the appellant has no ground to stand on after having cut the very ground from under his feet.*

...

The equitable jurisdiction by which a personal bar is placed upon a litigant from raising or relying upon the provisions of a statute is also contained in the maxim 'equity will not permit statute to be used as an engine of fraud'.

...

It may therefore be quite safely stated that if facts emerge from which it may be determined that it is unjust or inequitable to permit a respondent to a petition under s 181 to assert or to contend that a petitioner has no locus standi to move the court, then, he will be estopped from so asserting. *Stated in another fashion, a respondent who is guilty of unconscionable or inequitable conduct will not be permitted to raise or rely upon the requirement of membership in order to defeat a petitioner's standing as this would amount to his using statute as an engine of fraud. It does not matter how the proposition is formulated so long it has the effect adverted to*. (Emphasis added.)

[26] The plaintiffs submit that the defendants ought to be estopped from raising the issue of purported lack of locus by reason of non-payment of subscription against some of the plaintiffs as firstly these plaintiffs were all members of the MIC at the material time that the alleged wrongdoing took place. The first, second, third, fourth, seventh and eighth plaintiffs have refused to continue to pay subscription as they don't recognise the 2013 re-elections and the office-bearers who are currently occupying the MIC headquarters (para 81(vi) of affidavit Prabu1).

[27] The defendants cited the case of *Datuk Pasamanickam & Anor v Agnes Joseph R Narayanan Samy v Agnes Joseph* [1980] 2 MLJ 92 where at p 93 it was held:

It is settled law that members of a registered society are bound by its rules. If the rules provide that disputes between any member and the society or its office-bearers are to be decided by reference to a domestic forum within the framework of the society itself then no other outside tribunal has any jurisdiction to hear such disputes in the first instance. Such a provision in the rules of a registered society has the effect of ousting the jurisdiction of the court to hear any dispute between a member and the society or its office-bearers. On this point Thomson CJ (as he then was) had this to say in the case of *Tharmalingam v Sambanthan* [1961] 1 MLJ 63:

As has been said, all these questions of the relationship among members of an unincorporated association are matters of contract and the contract is to be

found in the Rules or the Constitution of the association. *If a member does not like the rules he has two courses open to him. Either he can refrain from joining the association*, and in the present case I would observe in parenthesis that the Malayan Indian Congress has nothing in common with a trade union, membership of which may be a vital necessity if a person is to earn his livelihood. *Or if he does join he can attempt to persuade his fellow members to change the rules. But so long as he remains a member and so long as the rules are there his relationship with his fellow members fall to be regulated by them*. (Emphasis added).

[28] I agree with the rationale set out in *Datuk Pasamanickam* that the members of a registered society, including the plaintiffs, are bound by its rules. If the plaintiffs, as members, do not like the rules such as the ones in articles 12.2, 12.2(a), 15.6 and 91 of the MIC Constitution, then they should either refrain from joining the MIC, or remain as members and try to change the rules. In this case, the plaintiffs, have by their own volition and acts, either by not paying the subscription or by resorting to court proceedings without first referring the matter to the CWC, have actually decided not to continue with their membership in the MIC. From exh S1 of encl 33, it is noted that:

(a) the first plaintiff ceased to be a member effective 23 February 2015 by virtue of article 91 of the MIC Constitution;

(b) the fifth and sixth plaintiffs ceased to be a member effective 10 February 2016 by virtue of article 91 of the MIC Constitution; and

(c) the second, third, fourth, seventh and eighth plaintiffs are not members of the MIC as their membership expired on 31 December 2015.

[29] There is no evidence that any of the plaintiffs made any attempts to regain their membership such as appealing to the CWC for reinstatement of their membership, or making a new application for membership. This means that for a long period after they had ceased to be members, the plaintiffs did nothing about restoring their membership in the MIC.

[30] By the fact that the plaintiffs are now not members of the MIC, it follows that they no longer have any say in MIC matters. A perusal of the nature of the reliefs sought by the plaintiffs in the SOC shows that even if the court grants such reliefs sought, the plaintiffs would not be in a position to enjoy the fruits of their litigation. The reliefs, if granted by the court, cannot retrospectively confer membership in the MIC for the plaintiffs. It defies logic for me to accept the plaintiffs' contention that, since at the material time when the alleged conspiracy and wrongdoings took place the plaintiffs were then members of the MIC, therefore now they must be deemed to be members by the court to entitle them to maintain these proceedings. I consider the fact that this is a fresh action to set aside the decision in JR 37 and JR 39. In order to

initiate any fresh action, the plaintiffs must first of all be members of the MIC to clothe them with the necessary locus standi. I would therefore distinguish the present case from *Owen Sim Liong Khui* and rule that it is necessary for the plaintiffs to continue to be members of the MIC from the time of the alleged conspiracy and wrongdoings until the current date to enable the plaintiffs to maintain this suit. Otherwise, the reliefs sought have no relevance to them. For instance, even if this court were to order fresh re-elections as prayed, the plaintiffs would not be able to vote as members in the fresh re-elections.

[31] I further observe that the first plaintiff is the only person who instituted JR 37. The second to the eighth plaintiffs were not parties to the two applications in JR 37 and JR 39. One of the main reliefs sought in the present suit is to set aside the final order in JR 37 and JR 39. The first plaintiff did not deem it fit to appeal the High Court's decision in JR 37. It was only Palanivel and three others who appealed the decision in JR 39. Even so, the appeal of Palanivel and three others was dismissed by the Court of Appeal. The Federal Court subsequently dismissed their application for leave to appeal thereto. Therefore, this court is not satisfied that the eight plaintiffs, including the first plaintiff, have any locus standi to institute these proceedings.

[32] As submitted by learned counsel for the second and sixth defendants, a party may have a cause of action, but if he has no locus standi to initiate the action, the court will, without hesitation, dismiss the action in limine. This seems to be the stand of the then Supreme Court in the case of *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 where Salleh Abas LP (as he then was) at p 20 clearly remarked:

> Every legal system has a built-in mechanism to *protect its judicial process from abuse by busybodies, cranks and other mischief-makers* by insisting that a plaintiff should have a special interest in the proceedings which he institutes. This special interest is a nexus between him and the party against whom he brings his complaints to court and is known as 'locus standi'. (Emphasis added.)

[33] On the requirement for locus standi, I further agree with the submissions of learned counsel for the third, fourth and fifth defendants that the plaintiffs, except for the first plaintiff, were not even parties to JR 37 and JR 39. Since the plaintiffs are not MIC members, they have no locus standi to commence this suit. They are the simply 'busybodies' with no right whatsoever here, and therefore have abused the judicial process (see *Lim Kiang Siang*).

[34] *On this ground of lack of locus standi alone, due to the plaintiffs not having membership in the MIC any more, the plaintiffs' suit ought to be struck out as prayed, without the court having to hear the case on its merits.*

[35] However, for completeness, I shall now consider the other issues raised.

Without locus standi as members of the MIC, whether the plaintiffs are entitled to seek declaratory reliefs

[36] Section 41 of the Specific Relief Act 1950 provides as follows:

> 41 Discretion of court as to declaration of status or right
>
> Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for any further relief:
>
> Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so.

[37] The plaintiffs contend that even without locus standi to maintain this suit, the plaintiffs are entitled to seek the declaratory reliefs in the SOC. The plaintiffs rely on the recent decision in *Ranjeet Singh Sidhu v Zavarco Plc* [2015] MLJU 638; [2016] 2 CLJ 975 where Wong Khian Kheong JC, inter alia, held as follows:

> [49] Both Mr Lim and Mr Wong have contended that Zavarco PLC is unable to reimburse Open Fibre and since restitution as a relief is not available, this suit should thus be struck out. This argument is not accepted by this court for the following reasons:
>
> (a) Paragraph 102.1.1 SOC prays for a declaration that the transfer of all ordinary shares in V Telecoms to Open Fibre or any other party through the consent judgment, is null and void (prayer for declaration). In *Charles Koo Ho-Tung & Ors v. Koo Lin Shen & Ors* [2015] MLJU 910; [2015] 1 LNS 755; [2015] AMEJ 1046, in para 33(d), I have dismissed an application to strike out an originating summons which has a prayer for declaration:
>
> > *33(d) the High Court has very wide discretionary powers to grant declarations under* s 41 of the Specific Relief Act 1950 ('the SRA') and O 15 r 16 RC, *despite the fact that a plaintiff has no:*
> >
> > (i) *locus standi to sue; and*
> >
> > (ii) *cause of action.*
>
> ...
>
> The above decision in *Charles Koo Ho-Tung (No 1)* has been affirmed by the Court of Appeal. In view of the prayer for declaration, even if it is assumed that this court cannot order restitution in this case, this suit should not be struck out;
>
> (b) besides the prayer for declaration, the SOC has also applied for, among others, the following redress:
>
> > (i) the setting aside of the consent judgment (para 102.1.1 SOC); and
> >
> > (ii) compensatory and exemplary damages (paras 102.1.6(i), (ii) and

102.8 SOC) (prayer for damages).

Even if it is assumed that restitution is not possible in this case, this suit can still proceed in respect of the above prayers for the setting aside of the consent judgment and prayer for damages; and ...

(c) whether restitutionary remedy is available or not in a particular case, should be decided after all the evidence has been adduced at trial. The court is only able to exercise its discretion judicially to award any appropriate relief (including restitution) after ascertaining the factual position at the conclusion of trial. *At this interlocutory stage, it is neither appropriate nor just to decide based solely on affidavit evidence whether restitution can be given or otherwise. A fortiori it is inappropriate and unjust to strike out a suit merely on an averment in an affidavit that restitution is impossible (no matter how 'convincing' the sworn allegation may be)*. I am unable to find any case in Malaysia and in other common law countries which has struck out a suit solely on the ground that the remedy of restitution cannot be granted. (Emphasis added.)

[38] With respect, I am of the opinion that the facts in this case are not on all fours with the ones in *Ranjeet Singh Sidhu*. In the present case, locus standi is important and necessary to entitle the plaintiffs to seek the declarations prayed for. This can be seen from s 42 of the Specific Relief Act 1950 which provides:

42 Effect of declaration

A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, those parties would be trustees.

[39] In this suit, in addition to the prayers for declarations and setting aside the orders dated 15 June 2015 in JR 37 and JR 39, the plaintiffs seek the consequential reliefs which include a declaration that 'the 2013 Re-Elections be declared illegal, null and void' and 'an order that fresh elections be held for all the MIC office bearers'. All the reliefs sought by the plaintiffs revolve around, or are centred on the MIC and its party elections.

[40] The plaintiffs are no longer members of the MIC and have no right to intervene or interfere with the MIC's party affairs, or seek reliefs which do not involve the plaintiffs personally. Clearly, the plaintiffs do not have a reasonable cause of action against the defendants here. As provided in s 42 of the Specific Relief Act 1950, a declaration made under that chapter is binding only on the parties to the suit. In my opinion, the process of this court should not be abused by the plaintiffs to obtain declarations on the MIC when the plaintiffs now have nothing to do with the said party. It is further noted that the first to sixth defendants are all sued in their personal capacities, and not as office-bearers of the MIC, or as representatives of the MIC. If the court orders fresh re-elections, it is the MIC, ie the party itself, that should rightfully hold the fresh

re-elections, and not the first to the sixth defendants. Therefore, the fatal flaw in the plaintiffs' case is that the MIC is not made a party to this suit. I am of the firm view that in the peculiar circumstances of this case, the plaintiffs are required to have locus standi as members of the MIC before they can maintain this suit, and to seek the reliefs prayed for. However, locus standi alone is insufficient. The plaintiffs are also required to make MIC a party to this action, which clearly the plaintiffs have failed to do.

The plaintiffs have not suffered loss personally

[41] As submitted by the defendants, the plaintiffs have not suffered loss personally. The plaintiffs are alleging loss or damage suffered by the party or MIC, but MIC is not a party to this suit. Yet, the plaintiffs are seeking an order to compel MIC to hold fresh re-elections. Here again, I reiterate that the plaintiffs do not have a reasonable cause of action. The plaintiffs are not the proper parties to initiate this suit.

[42] Where a plaintiff does not have a reasonable cause of action, the plaintiff's suit is therefore vexatious and frivolous, and an abuse of the court process (see Federal Court decision in *Yeng Hing Enterprise Sdn Bhd v Liow Su Fah* [1979] 2 MLJ 240 at p 244).

[43] It is observed that the persons who are said to be injured by the alleged conspiracy and wrongdoings as pleaded in the SOC, namely Palanivel, Pakas Rao, Sothinathan, and Balakrishnan have ceased to be members of the MIC since 24 February 2015, pursuant to article 91 of the MIC Constitution, when they commenced JR 39 without first referring their intended legal actions to the CWC. Since Palanivel and three others ('those persons') are no longer MIC members, the present action is academic because here the plaintiffs are applying to set aside the decision of the High Court in JR 39 which affects those persons. The same applies also in the case of JR 37 where the first plaintiff is no longer a member of the MIC. The plaintiffs' suit is therefore an exercise in futility. In fact, it is scandalous, frivolous and vexatious, and an abuse of the process of the court.

The alleged conspiracy as pleaded in the SOC has no nexus with the decision of the MIC to hold the 2013 re-elections for all posts and positions

[44] The decision to hold the 2013 re-elections was made by the MIC. This was noted by Asmabi J in her decision for JR 37 and JR 39. The learned judge referred to the 'crucial letter' which is fatal to both applications therein ie the letter of the MIC to the Registrar of Societies ('the ROS') dated 5 February 2015 which was signed by Palanivel, as the President of the MIC at the material time. That letter shows that the MIC had already agreed to hold re-elections for

all posts and positions in the party including the President's post. The contents of the letter dated 5 February 2015 were again repeated in the MIC's letter to the ROS dated 9 February 2015. It is clear that the MIC itself had agreed to hold re-elections for the President's posts etc even before the ROS' letter dated 6 February 2015 was issued. This fact demolishes the alleged new evidence of the plaintiffs which say that the contents of the letter dated 6 February 2015 were contrived to engineer the re-election of the President's post so that the first defendant could contest.

[45] The letter dated 9 February 2015 of the MIC is contemporaneous evidence which shows that Palanivel had complied with the direction of the ROS for the 2009 CWC to conduct and take charge of the re-elections. It therefore does not lie in the mouths of the plaintiffs to now contend that Palanivel, as the President of the MIC at the material time, did not have the authority to write the two letters dated 5 February 2015 and 9 February 2015 agreeing to hold the re-elections, and that the plaintiffs did not agree to the contents of those two letters.

[46] Another contemporaneous document which Asmabi J considered is the press release by the secretary general of the Barisan Nasional ('BN') dated 18 February 2015 ('press release') which clearly shows that Palanivel had agreed to the directions set by the ROS to hold the re-elections.

[47] Therefore, the plaintiff's purported new evidence alleging that the defendants had engineered the composition of the interim CWC to ensure that the re-elections would be managed and conducted to achieve the objectives of the scheme is further rebutted by the MIC's letter dated 9 February 2015 and the press release.

[48] Learned counsel for the plaintiffs submits that the fundamental consideration in deciding whether to impeach a judgment is whether there has been a miscarriage of justice. He referred to the decision of *Meek v Fleming* [1961] 3 All ER 148 which stated:

> *We are not dealing here with an ordinary case of an application to adduce fresh evidence. The plaintiff's contention involves something much more fundamental, and I regard this case as a wholly exceptional one*, ... The rules which are ordinarily applied where an application is made to adduce further evidence on appeal are those set out by Denning LJ in *Ladd v Marshall*. Where the fresh evidence sought to be adduced is directed solely to credit, the rules are even more stringent ... *These rules are based on the maxim that it is in the public interest that there should be an end to litigation; but in my judgment the application of this maxim cannot be presented to the extent of allowing a miscarriage of justice to go uncorrected. The rules relating to the admission of fresh evidence do not apply*, eg, in a case where fraud or surprise is alleged; see per Lord Buckmaster in delivering the judgment of the Privy Council in *Hip Foong Hong v Neotia & Co*. He there said:

> In all applications for a new trial *the fundamental ground must be that there has been a miscarriage of justice*. If no charge or surprise is brought forward, it is not sufficient to show that there was further evidence that could have been adduced to support the claim of the losing parties; the applicant must go further and show that the evidence was of such a character that it would, so far as can be foreseen, have formed a determining factor in the result. *Such considerations do not apply to questions of surprise, and still less to questions of fraud. A judgment that is tainted and affected by fraudulent conduct is tainted throughout, and the whole must fail* …;
>
> *Here the matter sought to be proved against the defendant was an offence involving not only the deception of a court of law, but also a question of police discipline, a matter which, I should have thought was of crucial importance having regard to the issues to be determined.*
>
> In the present case there is no doubt that the course taken, which had the effect of deceiving the court, was taken deliberately.
>
> *Where the court has been thus deceived in relation to what I conceive to be a matter of vital significance, I think that it would be a miscarriage of justice to allow a verdict obtained in this way to stand*. (Emphasis added.)

[49] Learned Senior Federal Counsel submits that in regard to setting aside a final judgment, in *Seruan Gemilang*, the Federal Court adopted the principles of setting aside a judgment on fresh evidence in *Halsbury's Laws of England,* Vol 26 (4th Ed) at para 561 which states as follows:

> 561. Setting aside judgment on fresh evidence.
>
> An action will lie to rescind a judgment on the ground of the discovery of new evidence which would have had a material effect upon the decision of the court. It must be shown (I) that the evidence could not have been obtained with reasonable diligence for use at the trial; (2) that the further evidence is such that, if given, it would have an important influence on the result of the trial, although it need not be decisive; and (3) that the evidence is such as is presumably to be believed.

[50] *Halsbury's Laws of England,* Vol 26 (4th Ed) at para 560 on the principles of setting aside a judgment obtained by fraud also states as follows:

> In such an action it is not sufficient merely to allege fraud without giving any particulars, and *the fraud must relate to matters which prima facie would be a reason for setting the judgment aside if they were established by proof*, and not to matters which are merely collateral. The court requires a strong case to be established before it will set aside a judgment on this ground, and *the action will be stayed or dismissed as vexatious unless the fraud alleged raises a reasonable prospect of success* and was discovered since the judgment. (Emphasis added.)

[51] Similarly, in *Dicey, Morris & Collins Conflict of Laws* (15th Ed) at pp 14–138 it is stated that:

> A party against whom an English judgment has been given may bring an independent action to set aside the judgment on the ground that it was obtained by fraud; but *this is subject to very stringent safeguards, which are found to be necessary because otherwise there would be no end to litigation and no solemnity in judgments. The most important of these safeguards is that the second action will be summarily dismissed* unless the Claimant can produce evidence newly discovered since the trial, which evidence could not have been produced at the trial with reasonable diligence, and *which is so material that its production at the trial would probably have affected the result*, and (when the fraud consists of perjury) so strong that it would reasonably be expected to be decisive at the rehearing and if unanswered must have that result. (Emphasis added.)

[52] In *Goh Hock Hai v Eon Bank Bhd* [2012] 9 MLJ 656, at pp 663–664 and 669 respectively, Varghese George J (as he then was), in allowing an application made to strike out a fresh action brought to set aside an earlier judgment of the court on the grounds of fraud, held that the question to be asked was whether deliberate fraud was shown to be committed on the court in the earlier action in obtaining the impugned judgment. His Lordship in allowing the application to strike out stated:

> I could not agree with counsel for the plaintiff that just because he was now crying 'fraud' or 'forgery', the plaintiff was entitled to a full trial to impeach the judgment duly entered in the 2001 suit in favour of the defendant;
>
> However, to carry that 'right' ie the right to set aside a judgment obtained by fraud 'to its conclusion there had to (sic) *some prima facie evidence to form the foundation of the allegation of 'deliberate fraud'* or *'deception'* practiced (sic) on the court or of the withholding of some material from which an inference of 'concealment or 'suppression' be ground drawn from;
>
> There was no basis for an *impeachment* of the judgment of 26 August 2010 in the 2001 suit either, as there was no prima facie material produced to show that the sought to be impugned judgment was obtained as a result of a deliberate fraud perpetrated on the court in the 2001 suit or by reason of a deception on the court or by suppression of any material evidence by the defendant.

[53] The plaintiffs rely on the emails, and the text messages between the second defendant and Ramanan. From a perusal of the emails and text messages, there is nothing to show how those emails and text messages would have influenced the mind of Asmabi J at the material time, or that the decision in JR 37 and JR 39 was obtained as a result of a deliberate fraud perpetrated on the court by the defendants. The learned judge was justified in relying on the MIC letters dated 5 February 2015 and 9 February 2015 agreeing to conduct the 2013 re-elections. In any case, as submitted by the learned senior federal counsel, nowhere in the emails or text messages do they refer to the seventh defendant who is the ROS. Moreover, the seventh defendant had in his affidavit categorically stated that he had applied his mind to the letters that he wrote to the MIC.

[54] By the fact that the plaintiffs claim that they have obtained fresh evidence subsequent to the hearing of JR 37 and JR 39, it does not mean that automatically the court must allow a full trial to allow the plaintiffs to impeach the judgment of Asmabi J which was duly entered, and upheld by the Court of Appeal (in the case of JR 39). Upon a thorough scrutiny of the plaintiff's alleged fresh evidence and after studying the grounds of judgment in JR 37 and JR 39, I am satisfied that the alleged fraud and new evidence of the plaintiffs would not have any impact whatsoever on the decision of Asmabi J to dismiss the two applications in JR 37 and JR 39. It is clear that the decision to hold the re-elections is a party decision made by the MIC itself. There was legal authorisation by the party itself to carry out the re-elections at all levels pursuant to the settlement reached by the disputing factions in the MIC. I am therefore of the opinion that the plaintiffs do not have a reasonable prospect of success by introducing the alleged new evidence and crying conspiracy and fraud by the defendants.

The decision to hold the 2013 re-elections is non-justiciable

[55] The plaintiffs maintain that they are not challenging the decision of the MIC and therefore the defendants' reliance on s 18C of the Societies Act 1966 is misplaced.

[56] Section 18C of the Societies Act 1966 provides as follows:

> 18C Decision of political party to be final and conclusive
>
> *The decision of a political party or any person authorized by it* or by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or *on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged*, appealed against, reviewed, quashed or *called in question in any court on any ground, and no court shall have jurisdiction* to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision. (Emphasis added.)

[57] With respect to learned counsel for the plaintiffs, the undisputed fact is that the plaintiffs are dissatisfied with the results of the 2013 re-elections, and are now challenging them by instituting this suit to enable the plaintiffs to set aside the orders in JR 37 and JR 39, and to get a new order to compel MIC to hold fresh re-elections. In effect, the plaintiffs are challenging the decision of the MIC to hold the 2013 re-elections and seeking an order to nullify the results of such re-elections. Clearly, the plaintiffs' action is regarding party affairs which are caught by the provisions of s 18C of the Societies Act 1966. Hence, this court shall have no jurisdiction to entertain the plaintiffs' action.

[58] In the recent case of *Anina Saadudia v Datuk Seri Tengku Adnan Tengku Mansor & Anor* [2016] 1 MLRH 647, S Nantha Balan JC (as he then was)

held, inter alia, as follows:

> [50] ... there is no doubt that s 18C of the Societies Act 1966 has proved to be a tool of great utility in keeping political party disputes including but not limited to elections, meetings, suspension and/or expulsion from membership etc, away from the purview of the court's scrutiny.
>
> [51] The common thread in all the cases is that court actions by disgruntled members or ex-members against political parties have all failed by reason of s 18C of the Societies Act 1966 wherein these court actions were struck out in limine, without the merits of the complaint being heard.

[59] The decision in *Anina Saadudia* was affirmed by the Court of Appeal on 21 April 2016 when the appeal by the appellant was dismissed (see Civil Appeal No W-02(IM)(NCVC)-2040–12 of 2015).

[60] I reiterate that the plaintiffs' cause of action in the present suit is regarding MIC's 2013 re-elections and seeking fresh re-elections after setting aside the decision in JR 37 and JR 39 on grounds of fraud and new evidence.

[61] The plaintiff's cause of action and issues raised are concerning the decisions of the MIC as a political party to hold the 2013 re-elections and, as prayed by the plaintiffs, to hold fresh re-elections. By virtue of the provisions of s 18C of the Societies Act 1966, it is clear that such party decisions and proceedings are non-justiciable and outside the jurisdiction of this court. I share the same views as those expressed by the learned judicial commissioner in *Anina Saadudia* and rule that the plaintiffs' present suit ought to fail by reason of s 18C of the Societies Act 1966.

Abuse of process of the court

[62] The High Court had already dismissed the two applications in JR 37 and JR 39. The first plaintiff chose not to appeal the decision in JR 37. However, for JR 39, Palanivel and three others appealed to the Court of Appeal. The appeal was dismissed. The Federal Court dismissed the appellants' application for leave to appeal to the Federal Court. The effect of the High Court decision, as affirmed by the Court of Appeal, is that the results of the 2013 re-elections are preserved.

[63] In the present case, the plaintiffs appear to have commenced this action for a collateral purpose. They are seeking declarations and orders which affect other persons who are not parties to the action eg the office-bearers at the branch, division and national levels who had been elected in the 2013 re-elections. In effect, the plaintiffs are basically seeking to depose such office-bearers. By the non-joinder of these other persons who may be affected or prejudiced by any decision made by this court, I hold that this suit is an

abuse of the process of the court. In my view, all persons interested in, or who would be affected by the outcome of this suit ought to be made parties, including the MIC. Without the joinder of these other persons, the declaratory reliefs sought by the plaintiffs would be in breach of the rules of natural justice.

The estoppel on the plaintiffs

[64] The plaintiffs have on their own accord elected not to participate in the 2013 re-elections. Therefore, they are now estopped from seeking another chance to participate in the fresh re-elections, if so ordered by this court. It is clear that the plaintiffs are using the court to gain political advantage and seek a second bite of the cherry. This is more so in the case of the first plaintiff who in the first place did not even appeal the High Court decision made against him in JR 37. He is now estopped from re-opening the matter and seeking to set aside not only the decision in JR 37 which was commenced by him, but also JR 39 which was not even his case.

The elements of conspiracy have not been sufficiently particularised

[65] The essential ingredients for conspiracy have been stipulated by Viscount Simon LC in *Crofter Hand Woven Harris Tweed Co Ltd and Others v Veitch and Another* [1942] 1 All ER 142; [1942] AC 435 at p 440 ('*Tweed*') as follows:

> An agreement between two or more persons which either:
>
> (a) Where the means are lawful, is an agreement the real and predominant purpose of which is to injure the claimant; or
>
> (b) Where the means are unlawful, is an agreement an intended consequence of which is to injure the claimant; and
>
> (c) *That acts done in execution of that agreement resulted in damage to the claimant*. (Emphasis added.)

[66] The plaintiffs have not pleaded as required above. From the pleadings, it noted that the elements of conspiracy have not been sufficiently particularised. The plaintiffs have not pleaded or shown how the alleged conspiracy of the defendants have injured them.

[67] The plaintiffs submit that the action herein is to impeach the order dismissing JR 37 and JR 39 under s 44 of the Evidence Act 1950 and as such there is no requirement for the plaintiffs to demonstrate any pecuniary loss.

[68] However, it is observed that the Court of Appeal in *Lonrho plc and others v Fayed and others (No 5)* [1994] 1 All ER 188 at p 193 had held otherwise:

> *A plaintiff in a civil action for conspiracy must prove actual pecuniary loss,* thought (sic) if he proves actual pecuniary loss the damages are at large, in the sense that they are not limited to a precise calculation of the amount of the actual pecuniary loss actually proved: see *Quinn v Leathem* [1900-03] All ER Rep 1; [1901] AC 495 ... As Lord Diplock said in *Lonrho Ltd and others v Shell Petroleum Co Ltd and others (No 2)* [1981] 2 All ER 456; [1982] AC 173 at p 188: 'The gist of the cause of action is damage to the plaintiff ...'. (Emphasis added.)

[69] I note that the plaintiffs in the present case have not pleaded the damage suffered by them, ie the actual pecuniary loss caused by the defendants' tort of conspiracy, as required in *Lornho*.

[70] The plaintiffs' purported damage suffered is the so-called disillusionment with the party, MIC discord and disharmony which caused the MIC members to be disgruntled or divided, distrust (paras 71–73 of the SOC), and members not turning up for the 2013 re-elections. However, these are not recognised in law as a head of damage for which the court could award to the plaintiffs personally. It is trite that damages have to be proved before they can be allowed. From the SOC, it is clear that the plaintiffs do not have a bona fide plea on damage suffered by them. This further fortifies the submissions of the first, second and sixth defendants that the plaintiffs do not have a reasonable cause of action.

[71] The plaintiffs are seeking reliefs for MIC but, as I had stated earlier, the MIC is not made a party to this suit. Furthermore, MIC has not applied to intervene in these proceedings or has complained that they have suffered damage as a result of the alleged fraud and conspiracy by the defendants.

[72] If at all any loss or damage has been suffered, it ought to have been the past president, three vice presidents and the secretary general of the MIC to make such a claim. However, such persons have not deemed it fit to institute these proceedings.

No reasonable cause of action based on pleadings

[73] Further to the earlier grounds given above on the issue that the plaintiffs' SOC does not disclose a reasonable cause of action, I consider the following submissions of learned counsel for the second and sixth defendants.

[74] In order to establish a reasonable cause of action, the plaintiff must fulfil the requirement to plead conspiracy with great particularity, and the requirement to establish that the 'acts done in execution of the agreement resulted in damage to the claimant' (*Tweed*).

[75] In *Gasing Heights Sdn Bhd v Aloyah bte Abd Rahman & Ors* [1996] 3 MLJ 259 Mahadev Shankar J (as he then was) at p 269 stated:

> Just as fraud must be pleaded with great particularity, so also all the constituent ingredients going to make up the conspiracy, must be pleaded. On this ground alone, the claim for conspiracy fails.

[76] The general principle therefore is that conspiracy must be pleaded with great particularity (*Gasing Heights*) with the aim of proving the causative link as required in *Tweed*, failing which, the claim is liable to be struck out under O 18 r 19(1)(a) of the ROC.

[77] In para 76(iv) of the SOC, the plaintiffs have prayed, inter alia, that the '2013 Re-Elections be declared illegal, null and void and of no effect and be set aside in toto'. The question is whether there is a causative link between the plaintiffs' specific pleading of conspiracy and the damage to the plaintiffs.

[78] Paragraph 59 of the SOC states:

> Pursuant to and in furtherance of the *conspiracy pleaded in paragraphs 31, 32, 35 to 44 and 56 to 58 above*, the defendants or any two or more them or such others carried out the following unlawful acts and means which were all done in furtherance of the said Scheme and by which MIC and its members were injured ... (Emphasis added.)

[79] In para 37.5 of the SOC, the plaintiffs have pleaded that the ROS' letter dated 5 December 2014 was 'in fact a notice under s 16(1) of the Act'. Pursuant to para 59 of the SOC, this letter is alleged to have been part of the 'conspiracy' upon which this claim is based. However, the plaintiffs have failed to particularise any other assertions of conspiracy which resulted in the 5 December 2014 letter. Therefore, this 'bare assertion of conspiracy' (*Gasing Heights*) in relation to the 5 December 2014 letter, is not accepted by this court.

[80] From the plaintiffs' SOC, in relation to conspiracy, it can be concluded that the plaintiff relies on:

(a) the ROS' letter dated 31 December 2014 (paras 37.5, 56.2, 57.1, 57.2, 59.3–59.5 of the SOC and sixth plaintiff's affidavit); and

(b) the ROS' letter dated 6 February 2015 (paras 37.9, 37.10, 56.2, 57.1, 57.2 and 59.3–59.5 of the SOC),

since it can be deduced that it is the circumstances surrounding these two letters which gave rise to the impugned 2013 re-elections.

[81] On the facts of the present case, the plaintiffs' pleadings in relation to the letters dated 31 February 2014 and 6 February 2015 must give rise to a reasonable cause of action, failing which, their claim is liable to be struck out. There must be a causative link between the alleged conspiracy which resulted in ROS two letters dated 31 December 2014 and 6 February 2015 with the impugned 2013 re-elections.

[82] A 'cause of action' has been defined in *Rediffusion (Hong Kong) Ltd v A-G of Hong Kong* [1970] AC 1136 as:

> 'A cause of action' is a state of facts in the existence of which entitles the court to grant to the plaintiff the relief applied for in the action.

[83] In *Tuan Haji Ishak bin Ismail & Ors v Leong Hup Holdings Bhd and others appeals* [1996] 1 MLJ 661 'cause of action' has been given its meaning:

> With respect, I think we would first ask ourselves what a 'cause of action' is. *1 Stroud's Fudicial Dictionary* (5th Ed) at p 378 gives 20 separate interpretations of this expression. I think the first is appropriate:
>
> > A 'cause of action' is the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment.

[84] In order to determine whether a reasonable cause of action exists as required in O 18 r 19(1)(a) of the ROC, the court *must* assume the truth of the primary facts alleged by the plaintiff. In *Tuan Haji Ishak bin Ismail*, Mahadev Shankar JCA stated:

> ... But O 18 r 19(1)(a) only requires that *the court assume the truth of 'primary facts' alleged*. It does not require the petitioner's inferences from those facts should also be assumed to be true. (Emphasis added.)

The ROS' letter dated 31 December 2014

[85] The first 'primary fact' alleged by the plaintiffs to give rise to a cause of action is the 31 December 2014 letter. The second and sixth defendants contend that the 31 December 2014 letter constituted a s 16(1) notice under the Societies Act 1966. This is consistent with Asmabi J's finding of facts in her grounds of judgment in JR 37 and JR 39, where she stated:

> [43] From the chronology of events as set out herein it could be deduced that there were in fact two decisions made by the ROS. *The first relate to the decision to issue the* s 16(1) *notice to the MIC as stated in the second impugned letter dated 31 December 2014*. The basis of this decision was that the ROS was of the opinion that disputes exist in the MIC as a result of which he was not satisfied as to the identity of the properly constituted office bearers in respect of certain branches and divisions and the vice-presidents and CWC respectively ...

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> [53] ... the applicants had obviously misunderstood the clear and proven facts placed before the ROS as well as before this court, in that, by the first impugned letter dated 5 December 2014, the ROS merely required the MIC's cooperation to hold elections in respect of the said eight divisions and the said two branches only. *The second impugned letter dated 31 December 2014 was a* s 16(1) *notice to the MIC. Nowhere in any of these two impugned letters was there any decision and/or direction to hold elections for all branches and divisions of the MIC as claimed by the applicants.* (Emphasis added.)

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[86] Upon the ROC informing the MIC, by its letter dated 31 December 2014, that the ROS was satisfied that there was evidence of disputes existing in the MIC, the ROS then instructed the MIC to settle the disputes by stating:

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> MIC dikehendaki menyelesaikan sepenuhnya pertikaian ini dalam jangka masa 30 hari untuk pertikaian peringkat cawangan, 60 hari untuk pertikaian peringkat bahagian dan 90 hari untuk naib presiden dan Jawatankuasa Kerja pusat (CWC) dari tarikh 5/12/2014. (Asmabi J's Grounds of Judgment, p 21).

D

[87] As submitted by the second and sixth defendants, even if the allegations of conspiracy in relation to the 31 December 2014 letter are assumed to be true, which they deny, it does not amount to a reasonable cause of action. The 31 December 2014 letter only required the MIC to hold re-elections for the specific branches, divisions and positions held to be in dispute by the ROS, whereas the 2013 re-elections sought to be impugned by the plaintiffs is based on a call for a re-election *at all levels*.

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[88] Therefore, the plaintiffs have failed to prove a causative link between the ROS' letter dated 31 December 2014 (which the plaintiffs have pleaded to be their particulars of the alleged conspiracy in para 59 of the SOC) and the impugned 2013 re-elections as required by *Tweed*. The claim is liable to be struck out under O 18 r 19(1)(a) of the ROC.

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The letter dated 6 February 2015

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[89] The second 'primary fact' alleged by the plaintiffs to have shown a reasonable cause of action is the letter dated 6 February 2015. The plaintiffs contend that the letter dated 6 February 2015 was a 'decision' which was made pursuant to an email sent by the sixth defendant dated 5 January 2015, constituting instructions pursuant to the alleged conspiracy (paras 51, 57.1, 57.2, and 59.3–59.5 of the SOC).

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[90] However, subsequently, in a letter dated 5 February 2015, Palanivel himself wrote to the ROS 'informing of an agreement to have fresh elections which had been reached at a meeting on 4-2-2015 ...' (para 37.8 of the SOC).

This letter constituted a *decision* by the MIC itself to hold fresh election *at all levels*.

[91] I am of the view that the ROS' letter dated 6 February 2015 merely echoed the MIC's letter dated 5 February 2015 and gave legal directions so as to enable MIC to give effect to *their own decision* as contained in the MIC's letter dated 5 February 2015. There was in effect, therefore, no 'decision' that had been made by the ROS to hold the re-elections.

[92] As pointed out by learned counsel for the second and sixth defendants, this is again consistent with Asmabi J's finding of facts in her grounds of judgment, where she stated:

> [55] Therefore, it is not justified for the applicants to turn around and blame the ROS when *in fact it was the applicants themselves who had communicated to the ROS on how they proposed to resolve the dispute with regard to the proper appointment of the lawful office bearers of the MIC*, which the ROS found to be in dispute. *The second applicant (Palani) had provided the solutions to the dispute to the ROS*. In view of this, it is not justified for the applicants to now blame the ROS. *It was the second applicant himself who had agreed to hold elections at all levels of the MIC*. The first impugned letter dated 5 December 2015 was not in any way to be termed a direction by the ROS to have elections at all levels of the MIC. *The ROS merely reiterated the decisions of the MIC to hold fresh elections to resolve all issues affecting the 2013 MIC elections in the 6 February 2015 letter* and the ROS then provided the direction on how the MIC was to move forward to resolve the dispute surrounding the properly constituted office bearers of the MIC. (Emphasis added.)

[93] From the above, it is clear that the plaintiffs have no reasonable cause of action against the defendants which merit a full trial.

[94] Finally, it is observed that the second and sixth defendants did not rely on O 18 r 19(1)(d) of the ROC in their respective applications. Thus, their submissions on abuse of the process of the court are not considered here.

DECISION

[95] Guided by the principles on striking out in *Bandar Builder* and *Seruan Gemilang*, and after considering *Meek v Fleming* to ensure that there is no miscarriage of justice, based on the above considerations, on a balance of probabilities, I hold that the plaintiffs' claim is without any reasonable cause of action. Furthermore, it is scandalous, frivolous and vexatious, and an abuse of the process of the court. The court is satisfied that the plaintiffs' claim is obviously unsustainable. It is therefore a plain and obvious case for which the writ and SOC ought to be struck out. The finality, integrity and sanctity of the orders in JR 37 and JR 39 ought to be perserved. There is no justification or necessity to have a full trial on the plaintiffs' claim.

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Order accordingly.

Striking-out applications allowed.

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Reported by Ashok Kumar

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